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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/683,995
Filing Date: March 10, 2002
Appellant(s): CURRY ET AL.

MAILED

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Technology Center 2100

Michael Dryja
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed on 4/12/2004 appealing from the Office
action mailed on 2/12/2004.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-24 are rejected under 35 U.S.C. 102(e) as being anticipated by Budge et al. (hereafter Budge), US pat. No.6,564,248.

As to claim 1, Budge discloses a system comprising:

a network and a first client (sub-system 2 of fig.1) having a first email messaging program (50 fig.1) installed thereon on which a composing user composes a message and records media [i.e., each sub-station having software component (fig.2B) such as a video email recorder 210 fig.2B) and video email player (270 fig.2B) for sending and receiving video email messages over the Internet, see col.4 lines 21-49], the first email messaging program sending the message to a receiving user over the network [sending message to the another sub-station (4 of fig.1) see abstract, figs.1, 2B, 2C, col.3 line 17 to col.4 line 49].

a second client (receiving sub-system 4 of fig.1) having a second email messaging program [the sub-station (4 fig.1) having software component (fig.2B) such as a video email recorder (210 fig.2B) and video email player (270 fig.2B) for sending and receiving messages over the Internet, see col.4 lines 21-49], installed thereon on which the receiving user receives the message over the network, the second email messaging program playing back the media upon the user viewing the message [i.e., upon receiving video email message, using the video email player (220 fig.2B) to output video message data and user prompts to the sound card driver (240 fig.2B) in order to play back the audio and video portions of the received video email, see figs.5, 6, col.3 line 17 to col.4 line 49, col.5 line 12 to col.6 line 54].

As to claim 2, Budge discloses a streaming media server, the first email messaging program uploading the media to the streaming media server upon the message being sent to the receiving user over the network, and the second email messaging program downloading the media from the streaming media server over the network upon the receiving user viewing the message (playing back the audio and video portions of the received video email, see figs.5, 6, col.3 line 17 to col.4 line 49, col.5 line 12 to col.6 line 54).

As to claims 3, 11, 14, Budge further discloses an email messaging program attaches the media as an attachment to the message upon the message being sent to the receiving user over the network, and the second email messaging program receives the

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media as the attachment to the message over the network (i.e., sending email with an attach executable video email player, see col.3 line 54 to col.4 line 49 and col.5 line 26 to col.6 line 54).

As to claims 4, Budge discloses at least one of: the Internet, an intranet, an extranet, a local-area network (LAN), a wide-area network (WAN), a wired network, a wireless network, and a telephony network (processing email services by using Internet, see col.3 lines 7-53).

As to claim 5, Budge discloses at least one of the first clients and the second client comprises: a *desktop computer*, a laptop computer, a cellular phone, a wireless phone, a set-top box, and a personal digital assistant (PDA) device (*desktop computer* as using a Personal Computer, see col.3 line 17 to col.4 line 49).

As to claims 6 and 7, Budge discloses text and at least one of: audio, video, streaming audio and streaming video (allowing users to record and to save both audio and video data from a local camera and microphone interfaced to the users' Personal Computer, see col.5 line 26 to col.6 line 54).

As to claim 8, Budge discloses a system comprising:

a networking mechanism communicatively coupling the system to a network (communication using Internet, col.4 lines 5-29).

an email messaging program (50 fig.1) having at least a composing capability for a user [the sub-station (4 fig.1) having software component (fig.2B) such as a video email recorder (210 fig.2B) and video email player (270 fig.2B) for sending and receiving messages over the Internet, see col.4 lines 21-49] to compose a message and record media associated with the message to send to another user over the network via the networking mechanism [i.e., upon receiving video email message, using the video email player (220 fig.2B) to output video message data and user prompts to the sound card driver (240 fig.2B) in order to play back the audio and video portions of the received video email, see figs.5, 6, col.3 line 17 to col.4 line 49, col.5 line 12 to col.6 line 54].

As to claim 9, Budge discloses an operating system on which the email messaging program runs (WINDOWS Operating System, see col.4 line 31 to col.5 line 58 and col.6 lines 1-54).

As to claim 10, Budge discloses capability uploads the media to a streaming media server communicatively coupled to the network over the network via the networking mechanism upon the message being sent to the other user over the network via the networking mechanism (in fig.4, an video email player reads a video file originate from a resident client and providing streaming data to user over a Graphical User Interface, see figs.4, 5, col.5 line 12 to col.6 line 54).

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As to claims 12 and 13, Budge discloses a playback capability for the user to view messages received from other users over the network via the networking mechanism and play back received media associated with the messages received and downloading the media associated with one of the messages received from the streaming media server over the network via the networking mechanism upon the user viewing the one of the messages received (i.e., playing back the audio and video portions of the received video email, see figs.4, 5, col.3 line 17 to col.4 line 49).

As to claim 15, Budge discloses at least one of: an analog modem, an Integrated Services Digital Network (ISDN) adapter, a network adapter card, a network adapter chipset, a cable modem, a Digital Subscriber Loop (DSL) modem, a digital modem, and a wireless modem (using modems for sending and receiving data information through Internet, Public Switched Network Telephone, see col.3 line 6 to col.4 line 49).

As to claims 16 and 17, Budge discloses text and at least one of: audio, video, streaming audio and streaming video (retrieving video message or clips from the video file, see col.5 line 26 to col.6 line 54).

As to claim 18, Budge discloses a method comprising:

saving a message entered by a user by an email messaging program (using video email software to provide for the creation of video email messages and

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transferring these message to email client, see abstract, figs.1, 2B, 2C, col.3 line 17 to col.4 line 49).

recording media associated with the message by the email messaging program, uploading the media to a streaming media server over a network by the email messaging program (50 fig.1) and sending the message over the network by the email messaging program [i.e., upon receiving video email message, using the video email player (220 fig.2B) to output video message data and user prompts to the sound card driver (240 fig.2B) in order to play back the audio and video portions of the received video email, see figs.5, 6, col.3 line 17 to col.4 line 49, col.5 line 12 to col.6 line 54].

As to claim 19, Budge discloses receiving a second message over the network by the email messaging program in response to a user requesting the email messaging program to display the second message, displaying the second message by the email messaging program, downloading second media associated with the message from the streaming media server over the network by the email messaging program and playing back the second media by the email messaging program (i.e., playing back the audio and video portions of the received video email, see figs.4, 5, col.3 line 17 to col.4 line 49).

Claim 20 is rejected for the same reasons set forth in claim 18. As to the added limitation, Budge discloses sending the media as an attachment to the message (i.e., sending email with an attach executable video email player, see col.3 line 54 to col.4 line 49 and col.5 line 26 to col.6 line 54).

As to claim 21, Budge discloses receiving a second message over the network by the email messaging program; in response to a user requesting the email messaging program to display the second message, displaying the second message by the email messaging program, downloading second media associated with the message from the streaming media server over the network by the email messaging program and playing back the second media by the email messaging program (i.e., playing back audio and video portions of the received video email, see figs.5, 6, col.3 line 17 to col.4 line 49, col.5 line 12 to col.6 line 54).

As to claim 22, Budge discloses a computer-readable medium having instructions stored thereon for an email messaging program comprising:

means for composing a first message by a first user (1 fig.1) and for recording first media associated with the first message to send to a second user (4 fig.1) over a network (see abstract, figs.1, 2B, 2C, col.3 line 17 to col.4 line 49).

means for viewing a second message received from the second user over the network by the first user, and for playing back second media associated with the second message [i.e., upon receiving video email message, using the video email player (220 fig.2B) to output video message data and user prompts to the sound card driver (240 fig.2B) in order to play back the audio and video portions of the received video email, see figs.5, 6, col.3 line 17 to col.4 line 49, col.5 line 12 to col.6 line 54].

As to claim 23, Budge discloses uploading the first media to a streaming media server communicatively coupled to the network over the network upon the first message being sent to

the second user (4 fig.1) over the network, and the means for viewing and for playing back downloads the second media from the streaming media server over the network upon the first user viewing the second message [i.e., upon receiving video email message, using the video email player (220 fig.2B) to output video message data and user prompts to the sound card driver (240 fig.2B) in order to play back the audio and video portions of the received video email, see figs.5, 6, col.3 line 17 to col.4 line 49, col.5 line 12 to col.6 line 54].

Claim 24 is rejected for the same reasons set forth in claim 18. As to the added limitation, Budge discloses sending the media as an attachment to the message (i.e., sending email with an attach executable video email player, see col.3 line 54 to col.4 line 49 and col.5 line 26 to col.6 line 54).

(10) Response to Argument

A. Introduction:

Budge et al. discloses an e-mail system with video email player for allowing transferring video email messages over any electronic mail system. The system includes a sending subsystem and a receiving subsystem remotely interconnected with a communications link. The sending subsystem incorporates a processor for executing

a video e-mail recorder program. "Video e-mail" contains audio and video. The recorder combines video from a video camera and audio from a microphone into a message file. The message file can optionally incorporate a video e-mail player program. This message file is then transferred from the sending subsystem to the receiving subsystem over the communications link. The Budge discloses a software for performing data multi-functions such as sending, recording and receiving video email messages over the Internet in both sending subsystem and receiving subsystem. The receiving subsystem has a video monitor and a speaker. The receiving subsystem also incorporates a processor for executing the video e-mail player program obtained from the message file or otherwise preloaded into the receiving subsystem processor. The player separates the video and audio portions of the message from the message file, causing the video portion to be displayed on the monitor and the audio portion to be played on the speaker. The Budge patent also discloses a video e-mail recorder. The recorder incorporates a video encoder, an audio encoder, and a video/audio multiplexer. The video encoder processes video data at its input, generating encoded video data at its output. The audio encoder processes audio data at its input, generating encoded audio data at its output. The multiplexer combines the encoded video and encoded audio so that these portions of a video e-mail message remain synchronized in time relative to each other, resulting in a multiplexed multimedia data output. A recorder manager controls these various recorder components to create video e-mail messages.

B. Issue:

Regarding claims 1-24, pages 2-6 of the Appeal Brief are directed to only a single issue of claim 1.

Appellant asserts that the Budge does not disclose a single mail program that provides for the composing of a message, the recording of media, and the sending of the message and media (at the composing user's side) and for receiving of a message, the displaying of the message and playback of the media (at the receiving user's side).

Examiner respectfully disagrees. Budge teaches an e-mail system with video email player for allowing transferring video email messages over any electronic mail system. The system includes a sending subsystem and a receiving subsystem remotely interconnected with a communications link. The sending subsystem incorporates a processor for executing a video e-mail recorder program. For example in figure 1, Budge teaches a network and a first client (sub-system 2 of fig.1) having a first email messaging program (50 fig.1) installed in both sending subsystem (2 fig.1) and a receiving subsystem (4 fig.1). Budge also teaches that each sub-station having software component (fig.2B) such as a video email recorder (210 fig.2B) and video email player (270 fig.2B) for sending and receiving video email messages over the Internet (see figs.1, 2B, col.4 lines 21-49]. Upon receiving video email message, the video email player (220 fig.2B) to output video message data and user prompts to the sound card driver (240 fig.2B) in order to play back the audio and video portions of the received video email (see figs.5, 6, col.3 line 17 to col.4 line 49, col.5 line 12 to col.6 line 54]. This is equivalent to what is claimed.

Appellant asserts that the Budge does not disclose a single email program that provides the functionality at either the composing user's side or the receiving user's side, both users' sides receiving the message and playing back the message over the network and the Budge's functionalities are divided in two separate programs: the email client and the video email player.

Examiner respectfully disagrees. The Budge teaches that each sub-station [either receiving side (4 fig.1) or sending side (2 fig.1)] has only an email program [i.e., an email messaging program (50 fig.1)] which also shown as a *software* (fig.2B)] for performing data multi-functions such as sending, recording and receiving video email messages over the Internet in both sending subsystem and receiving subsystem (see figs.1, 2B, col.4 lines 21-49]. Therefore, the Budge anticipates Applicant's claimed invention.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.


For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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Patent Examiner
A.U. 2151


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SUPERVISORY PATENT EXAMINER

Conferees:


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PRIMARY EXAMINER